

**Employer Status Determination
Decision on Reconsideration**

**North Carolina Operation
Lifesaver, Inc.**

North Carolina Operation Lifesaver, Inc. (Lifesaver) was held to be an employer covered under the Railroad Retirement and Railroad Unemployment Insurance Acts in a decision dated November 20, 1990 (Legal Opinion L-90-167), by reason of section 1(a)(1)(iv) of the Railroad Retirement Act of 1974 (45 U.S.C. § 231(a)(1)(iv)), which provides that the term "employer" shall include:

any railroad association, traffic association, tariff bureau, demurrage bureau, weighing and inspection bureau, collection agency, and any other association, bureau, agency, or organization which is controlled and maintained wholly or principally by two or more "employers" as defined in paragraph (i), (ii), or (iii) of this subdivision and which is engaged in the performance of services in connection with or incidental to railroad transportation * * *.

Lifesaver's purpose is to educate people about grade crossing hazards, identify and improve grade crossings, establish and maintain close contact with law enforcement agencies, and to publicize the "Operation Lifesaver" message. Lifesaver has one employee.

The president of Lifesaver, Mr. A. R. Fritts, Jr., submitted information indicating that Lifesaver has eight directors, four of whom are employees of two railroad employers, CSX Transportation, Inc. and the Norfolk Southern Corporation. The other four directors are employees of the North Carolina Department of Motor Vehicles, the North Carolina Department of Transportation, Bishop Industries, Inc., and the Governor's Highway Safety Program (of North Carolina), respectively. Mr. Fritts, who is the General Manager, Risk Management Program and Development for CSX Transportation, Inc., is one of the members of the Board of Directors. Mr. Fritts also submitted a copy of a memorandum of January 8, 1992, to him from Ms. Jane H. Mosley, State Coordinator for Lifesaver and its sole employee, specifying the financing for Lifesaver. Ms. Mosley stated that from February 17, 1990, through December 1991, CSX and the Norfolk Southern, the two major

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railroads in North Carolina, have contributed \$128,000.00 in funding (including Ms. Mosley's salary) and in-kind contributions. Ms. Mosley provided a list of other funding, including donations and in-kind contributions for the same period which total \$138,154.00. Approximately \$18,000.00 of this amount was contributed by other employers covered under the Acts; the balance was contributed by agencies of North Carolina and Private companies and associations. Accordingly, half of the directors and approximately 55% of the total of Lifesaver financing are provided by employers covered under the Acts.

As stated above, section 1(a)(1)(iv) of the RRA provides that an association that is controlled and maintained wholly or principally by two or more employers is an employer. While the facts show that approximately 55 percent of the funding for Operation Lifesaver is derived from railroad employers, half of the directors of the organization represent non-railroad entities. Based on these facts, it cannot be said that Operation Lifesaver is controlled and maintained fully or principally by railroad employers. Accordingly, it is the opinion of the Board that Lifesaver is not an employer under the Acts. Legal opinion L-90-167 is reversed.

Glen L. Bower

V. M. Speakman (Dissenting)

Jerome F. Kever